
TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #11-747

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING MINOR NEW SOURCE REVIEW AIR PERMITTING REGULATIONS**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 2-7](#) and [326 IAC 2-8](#) concerning Indiana's air permitting regulations and minor new source review (NSR) requirements. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: [326 IAC 2](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

The United States Environmental Protection Agency (U.S. EPA) has the authority to delegate implementation of many of the Clean Air Act (CAA) requirements to individual states. Each state is required to develop a state implementation plan (SIP) for U.S. EPA approval. A SIP is a collection of the regulations, programs, and policies that the state will use to implement various CAA requirements, including permitting requirements. Indiana's air permitting regulations are codified in Title 326, Article 2 of the Indiana Administrative Code (IAC). IDEM's air permitting regulations are part of Indiana's SIP.

In Indiana, persons or businesses planning to construct a new facility, expand an existing facility, operate a facility, or carry out an activity that will emit one or more regulated pollutants into the air will generally need some level of air permit for construction and operation. In most cases, IDEM has combined the construction and operating permit programs and issues a single document that serves as both the construction and operating permit. IDEM's preconstruction approval process is called New Source Review (NSR). IDEM issues several levels of operating permits including registrations, minor source operating permits (MSOPs), federally enforceable state operating permits (FESOPs), and Title V permits. A source's potential to emit a regulated pollutant (or more than one regulated pollutant) is a primary factor in determining the appropriate preconstruction approval or permit required for its operation.

Permitted sources may add to or modify their existing operations. However, unless the changes or modifications are by themselves exempt, the source may need to apply for preconstruction approval and go through NSR. Under Indiana's NSR regulations, for any type of preconstruction approval, IDEM will review applicable requirements for the new or modified source of air emissions. There are two categories of NSR, major and minor. Major NSR is triggered when the proposed construction will be subject to IDEM's prevention of significant deterioration (PSD) regulations at [326 IAC 2-2](#) or emission offset regulations at [326 IAC 2-3](#). Minor NSR is used when the construction or modification project does not trigger the more stringent PSD or emission offset requirements. The goal of minor NSR is to ensure that the source knows all of their air permitting requirements prior to starting construction. Under the CAA, Indiana is required to have a minor NSR program as part of the SIP. However, Indiana has the authority to customize the state's minor NSR regulations for the state's purposes as long as state regulations meet the minimum federal requirements.

On February 3, 1999, IDEM submitted for SIP approval, amendments to U.S. EPA concerning Indiana's existing minor NSR SIP rules. U.S. EPA identified several issues with Indiana's minor NSR rules concerning instances where preconstruction approval may be granted without the appropriate amount of public notice. In this rulemaking, IDEM is proposing to make revisions to Indiana's minor NSR regulations for the Title V permit program at [326 IAC 2-7](#) and FESOP program [326 IAC 2-8](#) to address U.S. EPA concerns. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking. Upon completion, these amendments will be submitted to U.S. EPA for SIP approval.

Alternatives to Be Considered Within the Rulemaking

Alternative 1. Amend rules at [326 IAC 2-7](#), [326 IAC 2-8](#) and any other permitting rules in [326 IAC 2](#), as necessary, to address U.S. EPA concerns with Indiana's minor NSR permitting program.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes, Indiana's minor NSR permitting program must satisfy minimum federal requirements.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. No rule change.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

40 CFR 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans); 40 CFR 52 (Approval and Promulgation of Implementation Plans); and 40 CFR 70 (State Operating Permit Programs).

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. This alternative may have a fiscal impact on permitted sources that are required to go through minor NSR for preconstruction approval. Under this alternative, some projects that would previously have been either a minor permit revision or a minor source modification, may now be considered a significant permit revision or a significant source modification. Significant permit revisions and significant source modifications have a higher fee than minor permit revisions and minor source modifications.

Potential Fiscal Impact of Alternative 2. Not applicable.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), the Small Business Regulatory Coordinator for this rule is:

Alison Beumer
IDEM Small Business Regulatory Coordinator
MC 60-04 IGCS W041
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Eric P. Shields
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 234-3997
smallbizombudsman@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn
IDEM Small Business Assistance Program Ombudsman
MC 50-01 IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386 or (800) 451-6027
bbaughn@idem.in.gov

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Amy Smith, Rule and State Implementation Plan Development Section, Office of Air Quality at (317) 233-8628 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.

- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #11-747 Minor NSR Amendments
Amy Smith Mail Code 61-50
Rule and State Implementation Plan Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5967. Please confirm the timely receipt of faxed comments by calling the Rule and State Implementation Plan Development Section at (317) 234-6530.

- (3) By electronic mail to asmith@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the email address indicated in this notice.**

- (4) Hand delivered to the receptionist on duty at the tenth floor reception desk, Office of Air Quality, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped no later than January 20, 2012. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Amy Smith, Rule and State Implementation Plan Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana).

Scott Deloney, Chief
Air Programs Branch
Office of Air Quality

Posted: 12/21/2011 by Legislative Services Agency

An [html](#) version of this document.